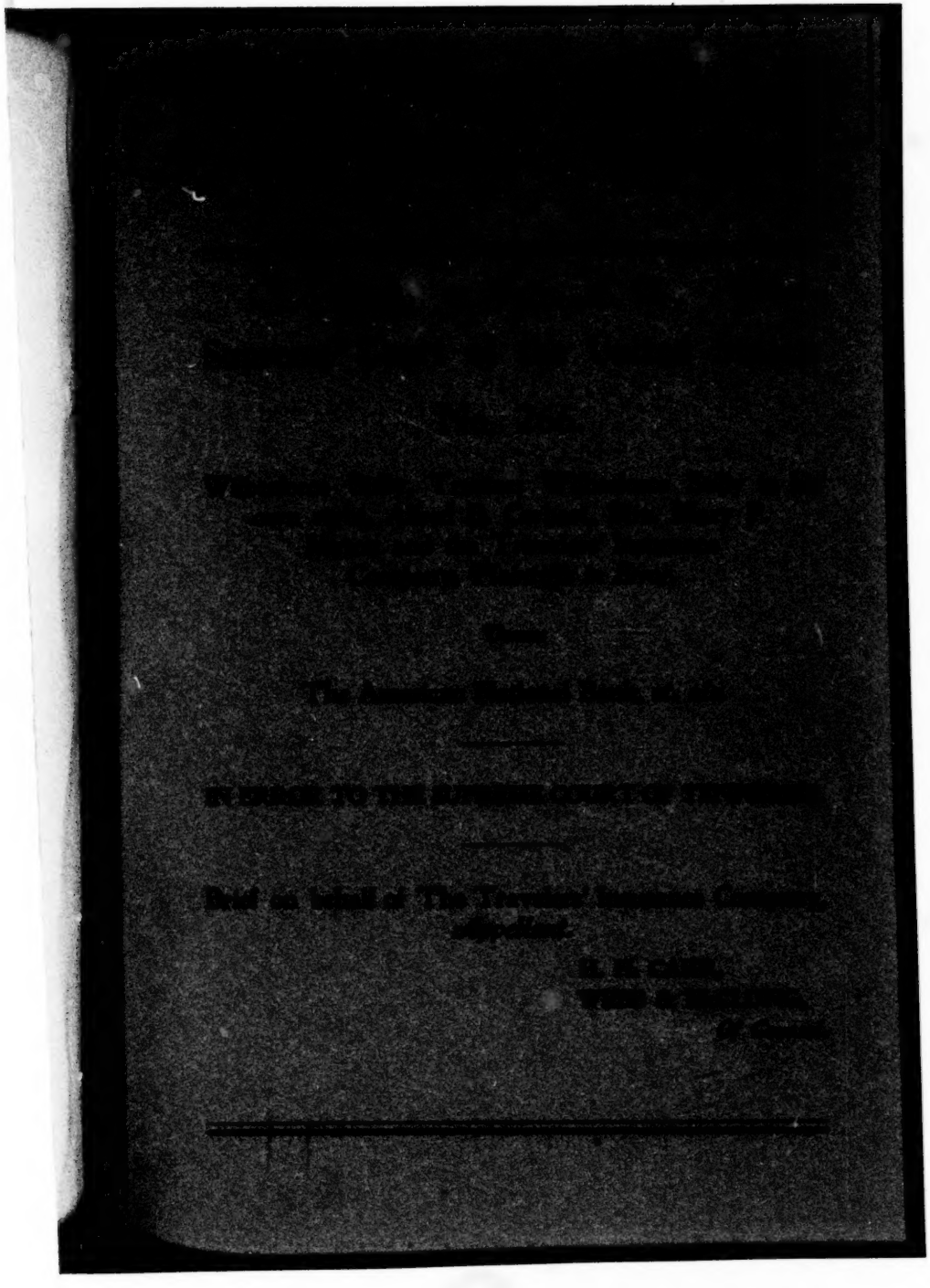

(17,373.)

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 266.

Wilberforce Sully, Trustee; Wilberforce Sully in his own right, Alfred B. Carhart, Mrs. Mary P. Myton and The Travelers' Insurance Company, Plaintiffs in Error,

versus

The American National Bank et al.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF ON BEHALF OF APPELLANT, THE TRAVELERS' INSURANCE COMPANY, OF HARTFORD, CONNECTICUT.

PRELIMINARY STATEMENT.

The printed record in this cause is an abreviation of the transcript sent up from the Supreme Court of Tennessee, as appears from the stipulation of counsel found on page 142 of the printed record. By mistake, the assignments of error to the decree of

the Supreme Court of Tennessee, which were filed in that Court in support of the application for writ of error, were omitted from the printed record. To supply this omission the parties have made and entered into another stipulation to the effect that the omitted assignments of error may be printed with the briefs of counsel with like effect, as if the same had been printed in the printed record. This second stipulation of counsel and the assignments of error will be found printed in full in the appendix to this brief.

STATEMENT OF THE CASE.

The Carnegie Land Company was incorporated under the laws of the State of Virginia, on the 24th day of June, 1889, as a mining and manufacturing company. Its business and principal offices were in Washington county, Tennessee. The act of the Legislature of Tennessee, passed March 19th, 1877, being Chapter 31 of the Acts of 1877, prescribed the terms upon which foreign corporations might do business in the State of Tennessee. Among other things a foreign corporation was required to register its charter in the State of Tennessee. It is conceded that said Carnegie Land Company complied with this provision of the statute, so as to enable it to do business in the State of Tennessee, and did transact its business affairs at Johnson City in said State in compliance with the provisions of said Act.

Stipulation of Counsel page 142 *of the Printed Record.*

On the 27th day of November, 1893, the American National Bank and others claiming to be creditors of the Carnegie Land Company filed a general creditors bill in the Chancery Court of Washington County, Tennessee, against the said Carnegie Land Company, alleging its insolvency and seeking to wind it up as an

insolvent corporation. The bill also alleged that said Land Company had made an assignment of all of its property in Tennessee, without recognizing in the assignment the priority given to resident Tennessee creditors, by said Act of 1877, Chapter 31. The Travelers Insurance Company, Wilberforce Sully and A. B. Carhart were not named as Defendants to said Bill. Said Chancery Court took jurisdiction of the cause and sustained said bill as a general creditors bill and administered the affairs of said corporation and pronounced decrees adjudicating the rights and priorities of creditors. On May 28th, 1895, Wiberforce Sully, Trustee, and A. B. Carhart filed their original bill in said Court against said Land Company and others seeking to foreclose a mortgage on the property of said Company which was registered February 10th, 1893. This mortgage covered the entire property of the Land Company and recited on its face that it was made expressly subject and subordinate to a mortgage of the Travelers' Insurance Company, dated and registered on the 23rd day of November, 1891, and covering that portion of said Land Company's property, known as the Carnegie Hotel property. The Travelers' Insurance Company and the trustee named in said mortgage, of November 23rd, 1891, were made parties defendant to this bill and answered the same.

> *See Stipulation, pages* 143, 144, *and* 145 *of the Printed Record, and see answer of the Travelers' Insurance Company and its Trustee, page* 31 *Printed Record.*

The Travelers' Insurance Company also filed its intervention as a creditor of said Land Company in said original cause of the American National Bank and others. *Printed Record page* 33.

This bill of Sully and Carhart and the original bill of the

American National Bank and others were consolidated and heard together. *Printed Record page* 143.

The final decree of the Chancellor was rendered September 3rd, 1896. *Printed Record page* 47.

This final decree pronounced judgments in favor of resident Tennessee creditors whose claims accrued prior to November 23rd, 1891, the date of the registration of the Travelers' Insurance Company's mortgage, amounting to $29,377.36. This decree also pronounced a judgment in favor of the Travelers' Insurance Company as non-resident creditor for the sum of $35.406.19. This decree further provided that out of the entire proceeds of the Land Company's property, including the Hotel property, mortgaged to the Travelers' Insurance Company, there should first be paid taxes, costs and counsel fees; and, second, all debts due to residents of Tennessee, which were contracted prior to November 23rd, 1891, the date of the Travelers' Insurance Company's mortgage; third, the remainder of the proceeds of the Carnegie Hotel property, mortgaged to the Travelers' Insurance Company should be applied on the mortgage debt of the Travelers' Insurance Company, thus postponing the mortgage debt of the Travelers' Insurance Company to the unsecured debts of the residents of Tennessee. *Printed Record page* 45.

On appeal from this decree, the Court of Chancery Appeals of the State of Tennessee pronounced a decree on September 15th, 1897, affirming the Chancellor's decree upon this point and giving the resident Tennessee creditors priority over the mortgage debt of the Travelers' Insurance Company. *Printed Record page* 84.

On the appeal to the Supreme Court of Tennessee from this decree of the Court of Chancery Appeals, the Supreme Court of

Tennessee, on November 19th, 1898, pronounced a decree affirming the Chancellor's decree and the decree of the Chancery Court of Appeals, upon this point and giving preference to the resident Tennessee general creditors over the mortgage debt of the Travelers' Insurance Company on the Hotel property. The contention in the Chancery Court and in the Court of Appeals and in the Supreme Court on behalf of the Travelers' Insurance Company and others was that the Act of 1877, Chapter 31, was unconstitutional, as being in violation of the Constitution of Tennessee, and also as being in violation of Article 4, Section 2 of the Constitution of the United States, and in violation of the 14th Amendment, Section 1 of the Constitution of the United States. All of said decrees were against that contention and hold that said Act of 1877 was not in violation of the Constitution of Tennessee, and was not in violation of the Constitution of the United States, and was a valid Act. *Printed Record page* 87.

The case is brought to this Court by Writ of Error to reverse the holding of the Supreme Court of Tennessee and to have said Act of 1877, Chapter 31 decreed invalid, as being in violation of the Constitution of the United States. The assignments of error of the Travelers' Insurance Company will be found in full in the appendix to this brief.

BRIEF.

I.

The contention which we shall make before this Court is that the decree of the Supreme Court of Tennessee, upholding said Act of 1877, Chapter 31 is erroneous, because said Act violates Section 1 of the 14th Amendment to the Constitution of the United States. The part of Section 1 of the 14th Amendment

upon which we rely to support our contention is as follows: "Nor shall any State deprive any person of life, liberty or *property without due process of law.*" The Act of 1877, Chapter 31 is entitled: "An Act to declare the terms on which foreign corporations organized for mining and manufacturing purposes may carry on their business and may purchase, hold and convey real and personal property in this State." Section 1 of the Act provides that such foreign corporations may carry on in this State the business authorized by their charters and do the things therein specified, upon the terms and conditions and in the manner and under limitations herein declared."

Section 2 of the Act provides that the corporation shall file a copy of its charter with the Secretary of State and then record an abstract of the charter in each county where the corporation proposes to carry on any business and to acquire any lands.

Section 3 is, "that such corporations shall be deemed and taken to be corporations of this State, and shall be subject to the jurisdiction of the Courts of this State, and may sue and be sued therein in the mode and manner that is, or may be, by the law directed in the case of corporations created or organized under the laws of this State."

Section 4 provides "That such corporations may purchase, acquire and hold real estate in fee or any other interest less than fee, and personal property of every kind" * * * "And may sell, lease and convey said real estate as natural persons may do."

Section 5 provides "That the corporations and the property of all corporations coming under the provision of this Act shall be liable for all the debts, liabilities and engagements of the said corporations, to be enforced in the manner provided by law for the application of the property of natural persons to the payment

of their debts, engagements and contracts. Nevertheless creditors who may be *residents of this State* shall have *a priority in the distribution of assets, or subjection of the same*, or any part thereof, *to the payment of debts* over all simple contract creditors, being residents *of any other country or countries*, and also over *mortgage or judgment creditors*, for all debts, engagements and contracts which are made or owing by said corporation previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid and shall constitute a prior lien on the property on which they are or may be charges as against all debts which may be incurred subsequent to the date of their registration or rendition."

The stipulation of counsel admits that on the 23d of November, 1891, when the Travelers' Insurance Company loaned $30,000.00 in cash to the Carnegie Land Company and took a mortgage on the hotel property to secure the same, the said Land Company was a solvent and going concern. *Printed record, page* 144.

It is manifest that the mortgage or judgment creditors whose claims are postponed to resident creditors are non-resident judgment or mortgage creditors, and that the language "being residents of any other country or countries," qualifying simple contract creditors, was also intended to qualify "mortgage or judgment creditors." This is the portion of the Act which the Travelers' Insurance Company claims has the effect to take its property without due process of law. On November 23d, 1891, the Carnegie Land Company had the right to borrow the $30,000.00 from the Travelers' Insurance Company, and had the right to give a valid mortgage upon its property to secure the loan. The money loaned by the Travelers' Insurance Company went into the bus-

iness of the Land Company and must have been applied either to the payment of its debts or to the betterment of its plant.

This Act of 1877, chapter 31, was considered by this Court in the case of *Blake vs. McClung*, 172 U. S., *page* 239.

The unconstitutionality of the Act was complained of in that case by certain natural persons who were residents and *citizens* of other States, and also by a foreign corporation, The Hull Coal and Coke Company, which was a corporation under the laws of the State of Virginia. The first contention of said parties was that the Act of 1877 violated Section 2 of Article 4 of the Constitution of the United States, which reads as follows: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Upon that contention this Court held in favor of the natural persons who were non-residents and *citizens* of other States than Tennessee, and that said Act did violate this provision of the Constitution. *Ibid., page* 254.

But as to The Hull Coal and Coke Company, the foreign corporation, the Court held that such corporation was not a "citizen" within the meaning of Section 2 of Article 4 of the Constitution, and as to it, said Act did not violate Section 2 of Article 4 of the Constitution. Said corporation then invoked the protection of Section 1 of the 14th Amendment of the Constitution, which provides that no State shall deprive *any person* of property without due process of law, and this Court held that said foreign corporation was a "person" within the meaning of the 14th Amendment. The Court further held that The Hull Coal and Coke Company was not *deprived* of any property because it was a simple contract creditor and had no property interest in the assets of the foreign corporation. *Ibid., pages* 259 *and* 260.

In the case at bar the Travelers' Insurance Company is a foreign corporation and is not a "citizen," so as to enable it to

invoke the protection of Section 2, Article 4, of the Constitution; so also, if it was a simple contract creditor it could not invoke Section 1 of the 14th Amendment of the Constitution, because it was not to be deprived of any *property* without due process of law. But the Travelers' Insurance Company occupies a different position from The Hull Coal and Coke Company, in this, that it is not a simple contract creditor, but is a creditor holding a mortgage on the property of the Land Company. This mortgage is *property*, and the Act of 1877, Chapter 31, deprives the Travelers' Insurance Company of this property without due process of law.

As before shown, Section 4 of the Act of 1877 expressly authorized said Land Company to "sell, lease and convey such real estate as natural persons may do." This included the right to mortgage its real estate.

On November 23rd, 1891, while said Land Company was a solvent and going concern, and while it had express authority and right to make said mortgage, it borrowed from the Travelers' Insurance Company $30,000.00 in cash, at the city of Hartford in the State of Connecticut (Printed Record, p. 147), and, to secure the same, executed said mortgage of November 23rd, 1891, on the Hotel property alone, leaving the balance of its property unincumbered. This balance so left unincumbered was more than sufficient to pay all the claims of resident Tennessee creditors, accruing prior to November 23rd, 1891, amounting to $29,377.36. *Stipulation, page* 144.

The total value of the Land Company's assets was $66,123.31. *Ibid, page* 145

Of this, the Hotel property furnished $25,000.00, leaving $41,123.31 with which to pay $29,377.36 to the resident Tennes-

see creditors, whose claims accrued prior to November 23rd, 1891.

The resident Tennessee creditors claim that, under Section 5 of said Act, they had a statutory lien on said property at the time said mortgage was made on November 23rd, 1891. Section 5 of the Act does not undertake to give the resident creditors a *lien* on the *property:* but only "a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts."

It is thus apparent from the terms of the Act itself that no lien was given to the resident creditors on the property of the Land Company: and whatever rights they have under the statute could not take effect until the time when a distribution of the assets in payment of debts should occur. The Hotel property was therefore clear of all lien on November 23rd, 1891, when the mortgage was made to the Travelers' Insurance Company.

The Supreme Court of Tennessee did not construe said Act to give a lien on the property of the Land Company at the time of the accrual of the resident creditors' debts, but construed the Act to mean that the valid mortgage lien of the Travelers' Insurance Company was displaced and lost by the subsequent and unforeseen accident of insolvency of the Land Company. In other words, the Court held that, under the 4th section of the Act, the Travelers' Insurance Company acquired a valid first mortgage lien on the Hotel property: and then, under the 5th section, this valid first mortgage lien was taken away by the accidental happening of an unforeseen contingency, not contracted for; and this was held to be due process of law.

This case must be distinguished from cases where a statute gives a lien to parties who have contributed to the betterment of

the "common pledge," such as the case of *Provident Institution vs. Jersey City*, 113 U. S., 506--516, where a lien for water rents was given: and the case of *Walston vs. Nevin*, 128 U. S., 578, where a lien was given for street assessments: and the case of *Norwood vs. Baker*, 172 U. S., 269--279, where it was held that an assessment for street improvement was not taking the owner's property without due process of law, provided the assessment did not exceed the benefits to the property; but if the assessment substantially exceeds the benefits, then, to the extent of such excess, it is taking the property without due process of law.

The Tennessee Act of 1877 is not limited to creditors whose claims accrued from benefits or betterments to the Land Company's property, but extends to all resident Tennessee creditors; and the effect of the Act is to take the property of the Travelers' Insurance Company and give it to other persons because they are residents of Tennessee, and not because they have benefitted the real estate on which the Insurance Company's mortgage rests.

In the case of *Norwood vs. Baker*, 172 U. S., 279, above referred to, it was held that an assessment for improvements in excess of benefits was, to the extent of the excess, a taking of the owner's property without due process. In the case at bar the whole assessment, so to speak, is in excess of the benefits, because the creditors to whom the State court gave the Insurance Company's property had conferred no benefits on the "common pledge," or on the public.

In *Missouri Pacific Railway vs. Nebraska*, 164 U. S., 403--417, the State Board of Transportation of Missouri made an order on the Railroad Company to allow private persons to build a grain elevator on its right of way, and claimed the authority to make this order under a statute of the State. The Supreme Court of

Missouri, in a mandamus proceeding brought to compel the Railroad Company to obey this order, held that the statute authorized the order. *Ibid*, p. 414.

It was held by this Court that this was taking the Railroad Company's property without due process of law.

A statute of Louisiana forbade any person to take out insurance on property in that State in any insurance company which had not complied with the laws of that State. Allgeyer insured cotton then in New Orleans in a New York company, which had not complied with the laws of Louisiana. The Supreme Court of Louisiana gave judgment for $3,000.00 against Allgeyer for the penalty of violating this statute. This Court held that this statute was not due process of law. *Allgeyer vs. Louisiana*, 165 U. S., 578--591.

It is not deemed necessary to enter into refinements upon the meaning of the words "due process of law," or to multiply authorities on the subject. In the cases cited, the whole question of due process of law has been fully considered, and the other cases on the question cited and commented upon.

We must come at last to the proposition, that the Act of 1877, as construed by the Supreme Court of Tennessee, takes from the Travelers' Insurance Company its property, lawfully acquired, and turns it over to a class of individuals, upon the accidental happening of an unforeseen contingency, solely because they are residents of Tennessee, and not because of any merit in their claims. It seems to be a plain case of depriving the Insurance Company of its property without due process of law.

II.

It may be claimed by adversary counsel that the Travelers' Insurance Company is not entitled in this Court to claim the

protection of Section 1 of the 14th Amendment to the Constitution, because it did not directly and distinctly rely upon and urge this point in the State Court.

In reply, we say:

1st. That the Supreme Court of Tennessee, in its decree of November 19th, 1898, distinctly adjudged that said Act of 1877 was not in contravention or violation of Section 1 of the 14th Amendment. *Printed Record*, p. 87. In *Kaukauna Co. vs. Green Bay, &c., Canal*, 142 U. S., 269, this Court held: that, although the inhibition of the Constitution was not distinctly put in issue by the pleadings, or directly passed upon in the opinion of the State Court, still this Court will consider the Constitutional question, if an adjudication of such was necessarily involved in the disposition of the case by the State Court.

The case at bar is stronger than that case, because the decree of the Supreme Court of Tennessee does show, as above indicated, that this question was directly and distinctly adjudicated by that Court.

2nd. Not only was this inhibition of Section 1 of the 14th Amendment passed upon by the Supreme Court of Tennessee, but it was also passed upon by the Court of Chancery Appeals. In its opinion, the Court of Chancery Appeals states that the Travelers' Insurance Company's assignments of error raise this question: (*Printed Record*, p. 65) and (on page 72) holds the Act of 1877 to be Constitutional, basing its opinion on former decisions of the Tennessee Supreme Court: and its decree adjudges this Act to be Constitutional. *Page 84*. It is true that the assignments of error of the Travelers' Insurance Company to the decree of the Chancery Court do, as printed in the Record (Page 92),

appear to rely alone on Section 2, Article 4 of the Constitution, and Section 1 of the 14th Amendment does not appear to be distinctly mentioned: but the opinion of the Court of Chancery Appeals shows that this section of the 14th Amendment was relied upon and the Court held against the Insurance Company's contention.

3rd. Moreover, Carhart & Sully claimed a lien on the Land Company's property under the mortgage of February 10th, 1893. They were non-resident "persons" claiming under a mortgage and were necessarily in the same class with the Insurance Company. Their assignments of error distinctly raised the questions of the Constitutionality of the Act of 1877, under Section 1 of the 14th Amendment. *Pages 123-4 and Page 86.*

The Insurance Company was before the Court of Chancery Appeals and the Supreme Court of Tennessee upon a broad appeal from a decree in Equity, which took up the whole case. *Page 52.*

If the Supreme Court of Tennessee had held the Act of 1877 Constitutional, upon the assignments of error of Carhart & Sully, this holding would, under the Tennessee practice, operate against the Insurance Company, and all other parties similarly situated, even if they had not assigned errors on that question.

Wood vs. Cooper, 2 Heiskell, 441.
Reynold's vs. Brandon, 3 " 598.
Carnes vs. Polk, 5 " 244.
Grubb vs. Browder, 11 " 299.
Parsons vs. Kinzer, 3 Lea, 352.
Butler vs. Kinzie, 6 Pickle, 32 & 383.

Under these decisions, the protection of Section 1 of the 14th Amendment having been claimed by Carhart & Sully, the Ten-

nessee Supreme Court would pass upon it for all parties similarly situated, including the Insurance Company. The claim of the Insurance Company was considered by said Supreme Court to be before it for adjudication and was passed upon accordingly.

This gives this Court jurisdiction.

Morrison vs. Watson, 154 U. S., 115.

4th. But this elaboration is unnecessary. There is no doubt about the fact that the Insurance Company was before the Court of Chancery Appeals and the Supreme Court upon a broad appeal and did claim the protection of Section 1 of the 14th Amendment: and both Courts denied the claim. The claim is now made again before this Court in the assignments of error appended to this brief.

T. S. WEBB, *Solicitor.*

H. H. CARR,
WEBB & McCLUNG,
Of Counsel.

APPENDIX.

IN THE SUPREME COURT OF TENNESSEE.

AMERICAN NATIONAL BANK ET AL

vs.

CARNEGIE LAND COMPANY ET AL,

AND

WILBERFORCE SULLY, TRUSTEE, ET AL

vs.

CARNEGIE LAND COMPANY ET AL.

CONSOLIDATED CAUSES.

ASSIGNMENTS OF ERROR.

The Travelers' Insurance Company, a private corporation, a resident of Connecticut, with its principal office in Hartford, by its Solicitors, feeling itself aggrevied by the findings and decree of the Supreme Court of Tennessee in the above entitled causes, assigns errors thereto, as follows:

I.

That the said Court erred in finding and holding that the Act passed by the General Assembly of Tennessee, on the 19th day of March, 1877, and approved on March 21, 1877, being Chapter 31 of the Laws of Tennessee of 1877, defining the terms upon which foreign corporations organized for mining and manufacturing purposes may carry on their business in Tennessee, and

especially Section 5 of said Act, was not in violation of Section 2, Article IV, of the Constitution of the United States, which provided that, "The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States;" and said Court erred in holding thereunder that Tennessee creditors were preferred, by virtue of said void Act, over appellant, as a citizen and resident of another State, in the distribution of the assets of defendant Company; that said Court should have held that as to appellant, as a resident and citizen of the State of Connecticut, the Act in question gave an unauthorized preference, privilege and immunity to residents and citizens of the State of Tennessee, by virtue alone of said residence and citizenship, the Act and Section thereof was unconstitutional and in violation of said clause of the Constitution of the United States as against said appellant, in this:

1. Appellants being the beneficiary under a Deed of Trust duly executed and delivered on certain real estate therein described to secure to them the repayment of a loan of thirty thousand dollars ($30,000.00), the said Deed of Trust having been executed at a time when the Carnegie Land Company was solvent, and there existing no legal impediment to the execution of said Deed of Trust, and the real estate embraced therein belonging to said Carnegie Land Company, and being free from any legal demand or claim in favor of any creditor of said Carnegie Land Company, the Court should have decreed in favor of appellants' right to subject the real estate embraced in said Deed of Trust to the satisfaction of its said debts.

2. Because said Court refused to recognize and uphold appellants' rights under said Deed of Trust until after the satisfaction of the debts created prior thereto in favor of citizens and residents of the State of Tennessee, was an adjudication without

authority of law and in violation of Section 2, Article IV, of the Constitution of the United States.

3. Appellant, by virtue of its said Deed of Trust, was entitled to have subjected to the payment of its debt the proceeds of the real estate embraced therein without being postponed to the rights of the creditors of the Carnegie Land Company, either residents or non-residents of the State of Tennessee, and the denial of this right in favor of appellant by said Supreme Court was without authority of law and in violation of Section 2, Article IV, of the Constitution of the United States.

4. The said Act of 1877, Section 5, does not impose upon the beneficiaries under trust deeds who are citizens and residents of Tennessee any such postponement of their rights as is sought to be imposed upon beneficiaries under deeds of trust who are citizens and residents of other States than Tennessee; the postponement of such non-resident creditors under their deeds of trust, contracts and engagements, to the rights of creditors who are citizens and residents of the State of Tennessee, and whose debts were created prior to the execution and registration of said trust deeds and engagements, places a burden upon and withholds a benefit from such non-resident creditors that is not placed nor withheld from the class of Tennessee creditors.

II.

That in the Chancery Court held in Johnson City, Washington County, Tennessee, being the court which had and exercised the original jurisdiction in the above entitled causes, the appellant herein specifically set up and claimed that it was entitled to the privileges and immunities guaranteed in Section 2, Article IV, of the Constitution of the United States, viz: "The citizens of each

State shall be entitled to all the privileges and immunities of the citizens of the several States;" and that it was deprived of such privileges and immunities by the Act of Tennessee, approved March 21, 1877, above referred to; and, also that its rights, privileges and immunities as a citizen of the United States were abridged by the provisions of the statutes of the General Assembly of Tennessee, approved March 21, 1877, above referred to, under the provisions of Section 1, Article XIV, of the Amendments of the Constitution of the United States, and that it was also deprived of its property and rights without the process of law by the enforcement of said invalid Act of said General Assembly of Tennessee, but the decision of said Chancery Court was against said rights, privileges and immunities so claimed by appellant; and the same rights, privileges and immunities so set up and claimed by appellant in said Chancery Court were again set forth and claimed by said appellant in the Supreme Court of Tennessee, the highest court in the State of Tennessee in which a suit of this kind could be had, and the decision of said Supreme Court was against appellant.

All of which is here assigned as error.

III.

That the said Supreme Court of Tennessee erred in finding and holding that the said Act of the General Assembly of Tennessee, passed March 19, 1877, and approved March 21, 1877, and being Chapter 31 of the Acts of 1877, and especially Section 5 thereof, which was enforced against appellant in the above entitled causes, was not in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, which provides as follows:

"No State shall make or enforce any law which shall abridge "the privileges or immunities of citizens of the United States;

"nor shall any State deprive any person of life, liberty or proper-
"ty, without due process of law; nor deny to any person within its jurisdiction "equal protection of its laws"; but said court should have held that said Act, and especially section 5 thereof, did abridge the rights and privileges of appellant as a citizen of the United States, and did deprive appellant, as mortgagee, of its property and rights, without due process of law, and deprived it of the equal protection of the laws, in this:

1. That said deed of trust was made by a solvent and going corporation, to-wit, the defendant Carnegie Land Company, authorized to make the same under the laws of Tennessee, and having the Constitutional right, as a solvent and going concern, to contract, as any other person or corporation within the State of Tennessee, which Constitutional right of the parties to said contract, to have the same enforced substantially as provided by the terms thereof, could not be taken away by statute, on the happening of a future event or winding up of the maker of said deed of trust, the Carnegie Land Company,—such arbitrary Statute destroying in this case, by its application, the ability and right of such a going concern to use and handle its property and contract with respect thereto as permitted to all other solvent holders and owners of such property within said State.

2. That said court should have held that said Act, and section 5 thereof, which was enforced against appellant, and through which Tennessee creditors were given priority over appellant in the distribution of the assets of Defendant Company, though claiming under a prior deed of trust, was in violation of said section 1 of Article XIV of the Constitution of the United States, and was not "due process of the law, because said Act, and section, was class legislation within the meaning of the law, in that the selection of the class subject to its provisions, to-wit, foreign

corporations permitted to do business as Tennessee corporations, in all respects, and whose engagements were by said Act to be enforced in the same manner as provided for natural persons, was not a natural but an arbitrary selection of class, without any reason, public or private, pointed out or to be otherwise seen, why these particular mining and manufacturing corporations more than any natural person or other domestic corporation, or other foreign corporation not organized for manufacturing or mining, as embraced in the Act, should be deprived of the Constitutional right of other solvent and going concerns, or persons, to own, use and contract with respect to their property within the State, as allowed to all other property owners, and why the creditors of such corporation should be required to take a deed of trust subject to the priority in favor of unknown debts and debtors theretofore contracted, in the event of subsequent insolvency, when creditors secured by deeds of trust of no natural person, domestic corporation, or other foreign corporation, except manufacturing and mining, are required to be so postponed and deprived of their ordinarily legally acquired rights. In enforcing said Act against appellant and not holding the same void, for the above reasons, and thereby depriving appellant of its property and rights, said Court erred.

3. The said Court erred in refusing to recognize appellant's right to share in the distribution of the assets of the Carnegie Land Company equally with corporations organized under the laws of Tennessee who were creditors of said Carnegie Land Company.

4. The Court erred in refusing to recognize appellant's right to share in the distribution of the assets of the Carnegie Land Company equally with corporations which were not organized under the laws of Tennessee, and which had not entered the State

under the provisions of the said Act of 1877, Chapter 31, of the laws of Tennessee, but were doing business in Tennessee under the general laws of Tennessee and under the laws of the United States, and whose debts were not secured by deeds of trust, mortgage or otherwise, and who were not entitled to priority over appellant, and in so holding said Supreme Court of Tennessee abridged the rights and privileges of appellant as a citizen of the United States.

5. If from any cause the Court found and so held that appellant's deed of trust was inoperative, unenforceable, and gave appellant no superior rights over the other creditors of the Carnegie Land Company, then said court should have held that the Act of 1877, Chapter 31, and especially Section 5 of said Act, was void, and that the appellant was entitled to share equally with all other creditors in the distribution of the assets of the Carnegie Land Company, which right to so share in the distribution of said assets was denied appellant on the ground that it was a non-resident of the State of Tennessee.

Wherefore, this appellant prays that this cause may be re-examined by the Supreme Court of the United States for writ of error for and on the errors assigned, and said findings and decree of the said Supreme Court of Tennessee may be reversed.

H. H. CARR,
WEBB & McCLUNG,
Solrs.

STIPULATION.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

UPON WRITS OF ERROR TO THE SUPREME COURT OF TENNESSEE.

WILBERFORCE SULLY ET. AL.
vs
AMERICAN NATIONAL BANK ET. AL.

WHEREAS, in the original stipulation of counsel as to record to be printed, pages 142-147 of printed record in the Supreme Court of the United States in the above cause, and under stipulation sixteenth thereof, on page 146, occurs this stipulation:

"16th. The assignments of error filed in the Supreme Court of Tennessee. Tr., vol. 6, pages 2025, 2038 and 2052, 2078." And,

WHEREAS, it was intended by this stipulation to have printed, especially, the assignments of error of appellant's filed in the Supreme Court of Tennessee from the decree and judgment of that Court to the United States; and,

WHEREAS, the pageing under said stipulation sixteenth calls for only the assignments of error filed in the Supreme Court of Tennessee, from the decree of the Court of Chancery Appeals of Tennessee, instead of the assignments of error above set out, by mistake of counsel.

Therefore, in order that the matter may be corrected without additional expense in the printing of the record, it is hereby agreed on the part of counsel representing parties in the above cause that the assignments of error filed by appellants on January 20th, 1899, and found at page 2110, 2116 and 2118, 2120 and 2121, 2126, of volume 6 of the record in the above cause, now filed in the Supreme Court of the United States, may be printed in the Briefs of counsel as provided by rule 21 of the Supreme Court of the United States, together with this stipulation, and when so printed, will be taken as a part of the record in the cause, and in full compliance with Rule 21 of the Supreme Court of the United States.

E. C. REEVES, Sol. for Creditors.

S. C. WILLIAMS, Sol. for Robert Burrow.

ISAAC HARR, Sol. for K.

DEADERICK & EPPS, Sol. for Am. Natt. Bank et. al.

E. J. BAXTER, Sol.

SAMUEL M. ARNELL, Sol.

THAD. A. COX, Sol. for Kirkpatrick, Williams & Bowman, by Jno. H. Bowman member of the firm.

HENRY HUDSON.

WEBB & McCLUNG, H. H. CARR, Sols. for Tavelers' Insurance Co.

SHIELDS & MOUNTCASTLE, Sols. for Carhart, Myton, Sully and others.